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FILED
KENNETH J. MURPHY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION CINCINNATI

UNITED STATES OF AMERICA,

Plaintiff,

v.

ELSA MORGAN-SKINNER, ET AL

Defendants.

C-1-00-424

CIVIL ACTION NO.

WEBER, J.

Judge	<i>[Signature]</i>
Mag.	
Journal	<i>[Signature]</i>
Issues	
Denotated	<i>[Signature]</i>

CONSENT DECREE

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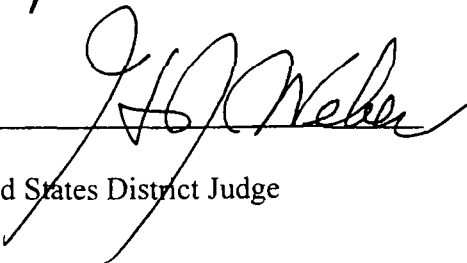
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27. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

28. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service including, but not limited to, service of a summons, in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court.

29. Contemporaneous with the filing of the complaint in this action, the United States shall file a stipulation or motion for an extension of time to answer the complaint in favor of each Settling Defendant, which extension shall run until 30 days after the United States withdraws or withholds its consent pursuant to Section XV (Public Comment) or the Court declines to enter this Consent Decree.

SO ORDERED THIS 2nd DAY OF April, 2001.


United States District Judge

of any samples taken as part of the Plaintiff's oversight of the Settling Generator/Transporter Defendant's implementation of the Work or as related to a prospective purchaser agreement.

25. Settling Generator/Transporter Defendants shall submit to EPA copies of the results of all QA/QC sampling results and/or tests or other data obtained or generated by or on behalf of Settling Generator/Transporter Defendants with respect to the implementation of this Consent Decree unless EPA agrees otherwise. Upon request, Settling Generator/Transporter Defendants shall provide to EPA the results of sampling and/or tests or other data obtained or generated by or on their behalf, prior to the data, tests or results being verified by QA/QC procedures.

26. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related to such information gathering and inspection authorities, under CERCLA, RCRA and any other applicable statutes or regulations.

X. ACCESS AND INSTITUTIONAL CONTROLS

27. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by any of the Settling Defendants, such Settling Defendants shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States, the State, and their representatives, including EPA and its contractors, Settling Generator/Transporter Defendants, and any Prospective Purchaser presented by EPA or Optionee,

with access at all reasonable times to the Site, or such other property for the purpose of conducting any activity related to this Consent Decree or the purchase of the Site, including, but not limited to, the following activities:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States or the State;
- (3) Conducting investigations relating to contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (6) Implementing the Work pursuant to this Consent Decree;
- (7) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXXI (Access to Information);
- (8) Assessing Settling Defendants' compliance with this Consent Decree;
- (9) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree; and
- (10) Surveying and making soil tests of the Site, locating utility lines, and assessing the obligations which may be required of a Prospective Purchaser by EPA under this Consent Decree.

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented pursuant to this Consent Decree. Such restrictions include, but are not limited to, drilling, digging, building, or the installation, construction, removal, or use of any buildings, wells, pipes, roads, ditches or any

other structures on the capped area and areas of the Site that are required to implement the Remedial Action and the requirements in this Consent Decree;

c. commencing on the date of lodging of this Consent Decree, refrain from bringing, and refuse to grant permission to any other person to bring Waste Materials or Scrap Metal onto the Site except in accordance with any federal, state, or local permit or this Consent Decree.

d. within 15 days of EPA's approval of a draft easement under this Paragraph, execute and record in the Recorder's Office of Butler County, State of Ohio, an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to those activities listed in Paragraph 27.a. of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 27. b. and c. of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to one or more of the following persons, as determined by EPA, (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the Settling Generator/Transporter Defendants and their representatives, and/or (iv) other appropriate grantees. Such Settling Defendants shall, within 15 days of any request by EPA under this Consent Decree, submit to EPA for review and approval with respect to such property:

(1) A draft easement, in substantially the form attached hereto as Appendix C-3, that is enforceable under the laws of the State of Ohio, free and clear of all

prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

(2) A current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards"). Within 30 days of EPA's approval and acceptance of the easement, such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the easement with the Recorder's Office of Butler County. Within 30 days of recording the easement, such Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

28. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of the Settling Defendants, Settling Generator/Transporter Defendants shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Settling Generator/Transporter Defendants, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 27.a. of this Consent Decree;

b. an agreement, enforceable by the Settling Generator/Transporter Defendants and the United States, to abide by the obligations and restrictions established by Paragraph 27.b. of this Consent Decree, or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree; and

c. if EPA so requests, the execution and recording in the Recorder's Office of Butler County, State of Ohio, of an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 27.a. of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 27.b and c. of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the Settling Generator/Transporter Defendants and their representatives, and/or (iv) other appropriate grantees. Within 45 days of any request by EPA pursuant to this Paragraph, Settling Generator/Transporter Defendants shall submit to EPA for review and approval with respect to such property:

(1) A draft easement, incorporating the land use restrictions set forth in Appendix C-3, that is enforceable under the laws of the State of Ohio, free and clear of all prior liens and encumbrances (except as approved by EPA), and

acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

(2) A current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

29. Within 30 days of EPA's approval and acceptance of the easement identified in the preceding Paragraph, Settling Generator/Transporter Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, the easement shall be recorded with the Recorder's Office of Butler County. Within 30 days of the recording of the easement, Settling Generator/Transporter Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

30. For purposes of Paragraph 28, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, and/or restrictive easements. With respect to any property owned or otherwise controlled by the Site owners or operators, past, present, or future, Settling Generator/Transporter Defendants' best efforts shall not require the payment of sums of money in consideration of access or in consideration of use or restrictive easements.

31. If any access or land/water use restriction agreements or easement required by Paragraphs 28.a. or 28.b. of this Consent Decree are not obtained within 45 days of the date of entry of this Consent Decree, or any access easements or restrictive easements required by Paragraph 28.c. of this Consent Decree are not submitted to EPA in draft form within 45 days of

EPA's request for such easements, Settling Generator/Transporter Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Generator/Transporter Defendants have taken to attempt to comply with Paragraph 28 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Generator/Transporter Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land. Settling Generator/Transporter Defendants shall reimburse the United States in accordance with the procedures in Section XVIII. (Reimbursement of Response Costs By Settling Generator/Transporter Defendants), for all costs incurred, direct or indirect, by the United States in obtaining such access and/or land/water use restrictions including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

32. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the Work, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Generator/Transporter Defendants and Settling Owner/Operator Defendants shall cooperate with EPA's and the State's efforts to secure such governmental controls.

33. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

XI. SETTling OWNER/OPERATOR DEFENDANTS' OBLIGATIONS WITH
REGARD TO THE TRANSFER OF REAL PROPERTY INTERESTS IN THE SITE

34. Limitations on Ability to Transfer Property; Notice to Successors-in-Title

a. Settling Owner/Operator Defendants agree not to transfer any real property interest at the Site, other than a utility or public access easement, without the advance approval of EPA and as provided in Paragraph 35 of this Section. At least 60 days prior to any proposed conveyance, the Settling Owner Defendant(s) seeking to convey the interest shall also give written notice to EPA, the Optionee, the Settling Generator/Transporter Defendants, and the State of the proposed conveyance, including the name and address of the grantee or Prospective Purchaser, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the Prospective Purchaser or grantee pursuant to Subparagraph b. of this Paragraph. Settling Owner/Operator Defendants also agree to subject any conveyed interest in real property that is located within the Site, including any utility or public access easements, to the access and restrictive easements set forth in Section X (Access and Institutional Controls) of this Consent Decree. Additionally, Settling Owner/Operator Defendants agree to subject any conveyed interest in real property that is located within the Site to any conditions imposed by EPA upon the use of the land which are designed to protect the integrity of the remedial action at the Site, or to otherwise protect human health and the environment. The proceeds of any transfers of the Site to which EPA consents under this Paragraph, in excess of the Option Price as defined by Paragraph 36.b., shall be paid to the Skinner Landfill Special Account, within the Hazardous Substance Superfund, in accordance with Section XXI (Procedures for the Reimbursement of Response Costs).

b. With respect to any property owned or controlled by the Settling Owner/Operator Defendants that is located within the Site, within 15 days after the entry of this Consent

Decree, the Settling Owner/Operator Defendants shall submit to EPA for review and approval a notice to be filed with the Recorder's Office, Butler County, State of Ohio, which shall provide notice to all successors-in-title that the property is part of the Site, that EPA selected a remedy for the Site on June 4, 1993, that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy and that the Settling Owner/Operator Defendants have granted an option to OXY USA to purchase the Site as provided in Paragraph 36 of this Consent Decree.

c. Such notice shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Settling Owner/Operator Defendants shall record the notice within 10 days of EPA's approval of the notice. The Settling Owner/Operator Defendants shall provide EPA and the Settling Generator/Transporter Defendants with a certified copy of the recorded notice within 10 days of recording such notice.

35. a. Upon submittal of the request for approval to transfer any interest in property located within the Site to EPA, and at least 30 days prior to the conveyance of any such interest including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Settling Owner/Operator Defendants conveying the interest shall give the Prospective Purchaser or grantee written notice of (i) this Consent Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section X (Access and Institutional Controls), and (iii) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on

the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section X (Access and Institutional Controls).

b. In the event of any such conveyance, the Settling Owner/Operator Defendants' obligations under this Consent Decree, including, but not limited to, their obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls, pursuant to Section X (Access and Institutional Controls) of this Consent Decree, shall continue to be met by the Settling Owner/Operator Defendants. In no event shall the conveyance release or otherwise affect the liability of the Settling Owner/Operator Defendants to comply with all provisions of this Consent Decree, absent the prior written consent of EPA. If the United States approves, the Prospective Purchaser may perform some or all of the Work under this Consent Decree, in accordance with a separate Prospective Purchaser Agreement to be entered into collectively by the United States, the Settling Generator/Transporter Defendants, and the Prospective Purchaser.

36. Grant of Option to Acquire Site to Optionee:

a. As a supplement to and not in limitation of the rights granted to EPA and the Settling Generator/Transporter Defendants under Paragraphs 34 and 35 of this Consent Decree and in consideration of the payment of \$5,000.00 (the "Option Consideration") by the Settling Generator/Transporter Defendants to the Settling Owner/Operator Defendants which shall be paid within 30 days after the effective date of this Consent Decree, the receipt and adequacy of which consideration is hereby acknowledged, Settling Owner/Operator Defendants grant to Optionee for the purpose herein provided, the exclusive right at its option to purchase the Site, or any part thereof, together with all improvements thereon, and all rights, easements and

appurtenances thereto (such right as it pertains to all or a part of the Site, is hereafter called the "Option") from time to time and at any time prior to January 1, 2015. Optionee may exercise the Option as to all or a part of the Site by written notice to Settling Owner/Operator Defendants and may assign the Option as to all or a part of the Site (in which event the Option shall be partially assignable) by written notice to Settling Owner/Operator Defendants. Notice of the exercise of this Option, if given in the manner provided for the delivery of notices under this Consent Decree, shall be deemed sufficiently given for all purposes.

b. If the Option is exercised, the Settling Owner/Operator Defendants shall convey title to the Site or portion thereof as to which the Option is exercised, on the following terms:

(i) The purchase price ("Option Price") for the entire Site, shall be the greater of \$50,000.00 or 5% of: (A) the Net Sale Proceeds received by Optionee as consideration for an assignment of the exercised or unexercised Option to purchase the Site to a Prospective Purchaser; or (B) if Optionee or its nominee takes title to the Site, the Net Sale Proceeds received by Optionee upon the substantially simultaneous sale of the Site to a Prospective Purchaser. If this Option is exercised for less than the entire Site, the minimum Option Price for such portion of the Site shall be a pro-rata share of the minimum Option Price set forth in the preceding sentence in the proportion that the area of the portion of the Site as to which the Option is exercised bears to the entire area of the Site prior to any exercise of the Option, except that the minimum Option Price for any parcel which includes all of the frontage of the Site on Cincinnati-Dayton Road shall be \$15,000.00.

(ii) For purposes of computation of the Option Price, the term "Net Sale Proceeds" shall mean the cash proceeds received by the Optionee after payment of all costs incurred in

connection with its sale of the Site (or a portion thereof) or received by the Optionee in connection with its full or partial assignment of the Option to a Prospective Purchaser, including, but not limited to, (A) real estate tax prorations, (B) the pay-off of mortgages existing on July 23, 1999, (C) realtor's commissions, (D) attorneys' fees incurred by Optionee in connection with the listing agreement, sale contract and closing, (E) transfer taxes and fees, (F) title the search, insurance and closing fees and premiums of title insurers and (G) survey costs, if any. Any mortgage or any consensual or nonconsensual liens encumbering the Site and granted or suffered by Settling Owner/Operator Defendants after July 23, 1999 shall be paid by Settling Owner/Operator Defendants upon transfer of title to the Site (or a portion thereof) pursuant to the Option (the "Closing") and shall not be considered in the computation of Net Sale Proceeds. The Option Consideration shall be credited against the Option Price at the Closing. Payment of the Option Price to the Settling Owner/Operator Defendants shall be made from the Net Sale Proceeds received by Optionee at the time of or promptly after receipt thereof.

(iii) The balance of Net Sale Proceeds after payment of the Option Price shall be paid by the Party receiving these proceeds to the Skinner Landfill Special Account within the Hazardous Substance Superfund in accordance with Section XXII of this Consent Decree.

(iv) If the Option is exercised as to only a part of the Site, it shall remain in effect with respect to the remainder of the Site as to which the Option has not been exercised.

(v) Within thirty (30) days after exercise of the Option, Settling Owner/Operator Defendants shall convey marketable and insurable fee simple title to the Site, or any part thereof as to which the Option has been exercised, to the Optionee or the Optionee's assignee or designee, by transferable and recordable general warranty deed, with waiver of dower where required, free,

clear and unencumbered except for charges against the Site that may be satisfied from Closing proceeds, the terms of this Consent Decree (including any easements or restrictions required thereunder), other matters acceptable to the Prospective Purchaser and the lien of real property taxes and installments of assessments. Any spouses of Settling Owner/Operator Defendants identified as such on Appendix E, for valuable consideration, the receipt and adequacy of which is hereby acknowledged, have executed this Consent Decree for the purpose of stating such spouses' agreement to join in the conveyance of the Site, or any part thereof, upon any exercise of the Option.

(vi) Settling Owner/Operator Defendants shall do all things necessary or appropriate to cooperate with all holders of the Option (or any part thereof) by signing or otherwise supporting any and all zoning and other land use and subdivision approval requests, so long as the Prospective Purchaser pays any out-of-pocket expenses for the same.

(vii) To the extent that the Option is not exercised prior to January 1, 2015, thereafter it shall be void and of no further force or effect. This Option shall be binding upon and shall inure to the benefit of the Settling Owner/Operator Defendants, and Optionee, and their respective heirs, personal representatives, successors and assigns.

(viii) Optionee is authorized to seek purchasers for the Site, or any part thereof, upon terms deemed by Optionee to be advantageous. Before accepting any proposals for the purchase of the Site, or any part thereof, from any Prospective Purchaser and assigning or exercising the Option with respect thereto Optionee shall obtain the written approval of EPA, by complying with the requirements set forth in Paragraph 39 of this Section.

(ix) The Option may be exercised only for the purpose of and in connection with a sale of the Site, or any part thereof, to a Prospective Purchaser for the purpose of reuse of the Site.

37. Within 60 days after this Consent Decree has been recorded in the Recorder's Office, in Butler County, Ohio, EPA shall file a Release of Notice of Federal Lien in the Recorder's Office, Butler County, State of Ohio. The Release of Notice of Federal Lien shall release the Notice of Federal Lien filed on November 14, 1990, Lien# 38360, Book 56, Page 371, and shall not release any other lien or encumbrance which may exist upon the Property; provided, however, that the Release of Notice of Federal Lien shall be effective only as to the Site, and shall not serve as a release of any CERCLA liability that might be asserted by EPA or other potentially responsible parties against any heir of the Settling Owner/Operator Defendants or any successor in interest who acquires an interest in the Site. The extent to which this Consent Decree may limit Settling Owner/Operator Defendants' CERCLA liability for the Site are set forth in Section XXVII (Covenants By Plaintiff With Respect To Non-De Minimis Parties) and Section XXIX (Covenants by Settling Defendants, Settling De Minimis Defendants, Settling Federal Agencies, and Settling De Minimis Federal Agencies).

38. Notwithstanding the preceding provisions of Paragraph 36 of this Section, if Optionee receives a written offer for the purchase of all or any part of the Site and Optionee has obtained all approvals required for it to accept such offer and to assign or exercise the Option with respect to the Site or portion thereof which is the subject of such offer, Optionee shall deliver a copy of such offer or its notice of intent to exercise the option to Settling Owner/ Operator Defendants ("Optionee's Notice"). Provided that it has complied with the requirements of Paragraph 39 of this Section (EPA's Authority With Regard to a Proposal for Site Re-Use),

Optionee may proceed with the assignment or exercise of the Option unless it receives written notice from Settling Owner/Operator Defendants within 15 days following the date of delivery of Optionee's Notice, stating that, Settling Owner/Operator Defendants elect to terminate the Option ("Notice of Election to Terminate Option") with respect to the Site or portion thereof covered by Optionee's Notice. If Settling Owner/Operator Defendants elect to terminate the option, they shall pay to Optionee the purchase price set forth in Optionee's Notice, less the Option Price that would be received by Settling Owner/Operator Defendants under Paragraph 36. The Notice of Election to Terminate Option shall be accompanied by a payment equal to 10% of the purchase price as set forth in Optionee's Notice. The Election to Terminate Option shall be accomplished by Settling Owner/Operator Defendants' payment of the balance of the purchase price within 15 days thereafter. Upon receiving full payment for such termination of the Option, Optionee will execute and deliver to the Settling Owner/Operator Defendants a release of the Option as to all or the relevant portion of the Site. Optionee shall pay the net amount it receives from Settling Owner/Operator Defendants for release of the Option, after payment of the costs which Optionee has incurred with respect to the proposed sale which was the subject of the Optionee's Notice and which would have been deducted from the purchase price under Paragraph 36 (b)(ii) if Settling Owner/Operator Defendants had not terminated the Option, to the Skinner Landfill Special Account within the Hazardous Substance Superfund in accordance with Sections XXI and XXII of this Consent Decree.

39. EPA's Authority With Regard to a Proposal for Site Re-Use.

a. In the event that the Settling Owner/Operator Defendants propose to sell all or a portion of the Site, or the Optionee proposes to exercise all or a portion of the Option, and the sale or exercise of the option reasonably could involve the potential for re-use of the Site, the procedures set forth in this Paragraph shall be followed. The party proposing the plan for re-use, whether the Settling Owner/Operator Defendants, the Optionee, a Prospective Purchaser, or any other party, shall deliver a request for approval in writing to EPA, accompanied by a copy of the plan for re-use of the Site along with any agreements with any Parties to this Consent Decree that relate to the transfer of any real property interests at the Site and any plan for re-use. These documents shall be sent to EPA and the State in the manner provided by Section XXXIV. (Notices and Submissions) of this Consent Decree.

b. EPA may review the plan for re-use, in consultation with the State, pursuant to the provisions set forth in Section XIII (EPA Approval of Plans And Other Submissions) of this Consent Decree, and may approve, disapprove, approve upon conditions, or modify or require that modifications be made to the plan. EPA may also impose any restrictions upon the re-use of the Site that it determines are necessary to protect human health or the environment or to protect the integrity of the Remedial Action. Any Party to this Consent Decree may challenge EPA's action(s) regarding the plan for re-use or dispute EPA's determination that restrictions on re-use are necessary to protect human health or the environment or to protect the integrity of the Remedial Action under the provisions of Section XXV (Dispute Resolution) of this Consent Decree, under the standards of Paragraph 103 (Arbitrary and capricious standard) of that Section.